

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

In re: :
Case No. 02-26645 JAD
:
K & J COAL CO., INC. :
:
Debtor : Chapter 11
:

K & J COAL CO., INC. :
:
Movant : Doc. No. ____
:
v. : Hearing Date: 7-28-2017
:
Time: 10:00 A.M.
CAMBRIA COUNTY RECREATION :
AND CONSERVATION AUTHORITY; :
CAMBRIA COUNTY TAX CLAIM :
BUREAU; CAMBRIA COUNTY; :
CHEST TOWNSHIP; CAMBRIA :
HEIGHTS SCHOOL DISTRICT; :
CLEARFIELD COUNTY TAX CLAIM :
BUREAU; CLEARFIELD COUNTY; :
CHEST TOWNSHIP; AND HARMONY :
AREA SCHOOL DISTRICT :
Respondents :

REORGANIZED DEBTOR'S APPLICATION TO EMPLOY SHALE CONSULTANTS,
LLC, d/b/a CX-ENERGY AS BROKER AND TO APPROVE
SALE OF REORGANIZED DEBTOR'S INTEREST IN COAL, SUPPORT, OIL, GAS
AND MINERAL ESTATES, TOGETHER WITH RELATED ACCESS, SURFACE,
DRILLING AND REMOVAL RIGHTS TO EACH TRACT AS ARE HELD BY THE
REORGANIZED DEBTOR FREE AND CLEAR OF LIENS, CLAIMS, OR

**ENCUMBRANCES EXCEPT FOR INTEREST OF CAMBRIA COUNTY RECREATION
AND CONSERVATION AUTHORITY**

COMES NOW K&J Coal Co., Inc., a Reorganized Debtor, by and through its attorneys, James R. Walsh, Esquire, Spence, Custer, Saylor, Wolfe & Rose, LLC, and does file the within Reorganized Debtor's Application to Employ Shale Consultants, LLC, d/b/a CX-Energy as Broker and to Approve Sale of Reorganized Debtor's Interest In Coal, Support, Oil, Gas And Mineral Estates, Together With Related Access, Surface, Drilling And Removal Rights To Each Tract As Are held By The Reorganized Debtor Free And Clear Of Liens, Claims Or Encumbrances Except For Interest Of Cambria County Recreation And Conservation Authority in the above-referenced case, upon a cause whereof the following is a statement to wit:

1. The above-captioned case was commenced by the Debtor's filing of a voluntary petition for relief, pursuant to the provisions of Chapter 11 of Title 11 of the United States Code, 11 U.S.C. Section 101 et seq., on July 19, 2002.

2. This proceeding is a "core" proceeding over which this Court has jurisdiction pursuant to 28 U.S.C. §§157 and 1334.

3. Venue is proper pursuant to 28 U.S.C. §1409(a).

4. The Debtor remained in control of its assets and manages its affairs as a Debtor-In-Possession with all of the rights and duties of such an entity pursuant to 11 U.S.C. § 1107.

5. Respondent, the Cambria County Recreation & Conservation Authority ("Authority") is a municipal authority organized and existing under the laws of the Commonwealth of Pennsylvania, with a business address of Attn: George Gvozdoch, Esquire, Solicitor, Cambria County Human Services Building, 401 Candlelight Drive, Suite 240, Ebensburg, Pa., 15931.

6. Respondent, Cambria County Tax Claim Bureau ("Cambria Bureau") is an entity created by statute for the collection of delinquent real estate taxes in Cambria County and has a

mailing address of Attn: JoAnne Ranck, Director, Cambria County Court House, 200 South Center Street, Ebensburg, Pa., 15931.

7. Respondent, Cambria County (“Cambria County”) is a municipal corporation with a business address of Attn: William Gleason Barbin, Esquire, Solicitor, Commissioners Office, Cambria County Court House, 200 South Center Street, Ebensburg, Pa., 15931.

8. Respondent, Cambria Heights School District (“Cambria Heights”) is a school district created under the laws of the Commonwealth of Pa., with a business address of Attn: Michael Strasser, Superintendent, 426 Glendale Lake Road, Patton, Pa., 16668.

9. Respondent, Chest Township (“Chest Cambria”) is a municipal corporation with a business office of attn: David Schaeffer, Supervisor, and P.O. Box 103, Flinton, Pa., 16648.

10. Respondent, Clearfield County Tax Claim Bureau (“Clearfield Bureau”) is an entity created by statute for the collection of delinquent real estate taxes in Clearfield County and has a mailing address of attn: Jennifer Wooster, Director, 230 East Market Street, Suite 117, Clearfield, Pa., 16830.

11. Respondent, Clearfield County (“Clearfield County”) is a municipal corporation with a business office of c/o attn: John Sobel, Commissioner, Commissioners Office, 212 East Locust St., Suite 112, Clearfield, Pa., 16830.

12. Respondent, Harmony Area School District (“Harmony Area”) is a school district created under the laws of the Commonwealth of Pa., with a business address of Attn: Mrs. Terry Young, Superintendent, 5239 Ridge Road, Westover, Pa., 16692.

13. Respondent, Chest Township (“Chest Clearfield”) is a municipal corporation with a business address of attn: Dan Sunderland, Supervisor, 2406 McPherron Road, La Jose, Pa., 15753.

14. At the time of the commencement of the instant case K&J was the owner of certain coal interests, mining rights, support rights, surface rights, access rights, removal rights, oil rights, gas rights, mineral rights and related drilling, access and removal rights to lands situate in Chest Township, Cambria County, Pennsylvania, and Chest Township, Clearfield County, Pennsylvania, consisting of 5,602.764 acres as set forth on Ex. "A" attached to this Motion/Application.

15. K&J thereafter filed a Plan of Reorganization under Chapter 11 of Title 11 of the U.S. Code, 11 U.S.C. Section 101, et seq dated as of August 31, 2003, and the same was scheduled for a confirmation hearing on February 9, 2004.

16. After due and proper notice as required by law, the Bankruptcy Court approved and confirmed the Debtor-In-Possession's Plan Of Reorganization dated August 31, 2003, As Amended December 8, 2003, As Amended By The Order Of Confirmation Dated February 9, 2004 via the Court's Order of February 9, 2004.

17. The said Plan Of Reorganization provided, inter alia, for the Debtor to expose to sale its remaining real estate holdings, which included the interests referred to in Par. 14 supra and Ex. "A" of the same, and for the Bankruptcy Court to retain jurisdiction to authorize, approve and confirm said sales.

18. The Reorganized Debtor has been marketing the interests referred to in Par. 14 supra and Ex. "A" of the same since confirmation, however, it had not located buyers for the same.

19. The Reorganized Debtor's management, after consulting with Shale Consultants, LLC, d/b/a CX-Energy, an established auctioneer of coal, mining, oil and gas rights that the best interests of the creditors of the estate and the Reorganized Debtor will be furthered by the retention of Shale Consultant, LLC. upon the terms of the Oil And Gas Listing Agreement

attached heretofore approved by the Court to serve as auctioneer for said rights, which rights shall be sold via an “on-line” auction to be conducted by Shale Consultants, LLC upon the terms set forth in said Ex. “B”, which sale by auction shall be with a reserve of One Million Two Hundred Fifty Thousand Dollars (\$1,250,000.00), to be advertised in accord with this Court’s rules and upon its web site, as well as as determined by Shale Consultants, LLC in consultation with management of the Reorganized Debtor for such additional marketing and advertising as they may determine will be in the best interest of the sale of such rights, to be conducted on or about March 31, 2017 as proposed in said Listing Agreement.

20. The said auction was conducted as authorized by the Court’s Order, however the auction did not result in the sale price reaching the reserve price, and therefore auction sale was completed.

21. Since the auction sale of March 31, 20017 was not successful, the Reorganized Debtor’s management, with the assistance of Shale Consultants, LLC have been negotiating with various interested parties to reach a negotiated sale of the subject assets.

22. Attached to the previous Motion as Ex. “C” was the Affidavit of William Smith, of Shale Consultant, LLC attesting to the lack of any adverse interest and the disinterestedness of William Smith, the other employees of Shale Consultant, LLC, and Shale Consultants, LLC itself.

23. An Amendment to the Listing Agreement previously approved, which authorized and approved the payment of a Buyer’s Premium of 10% of the Sales Price, has been negotiated, which modifies the applicable commission to 6% of the highest and best offer brought by Shale Consultants, LLC up to one hour prior to the time of the sale to be conducted before this Court.

24. The Reorganized Debtor, with the assistance of Shale Consultant, LLC has, after negotiating with several parties, entered into, subject to the Court's approval, a Purchase And Sale Agreement for the sale and purchase of the subject assets, with Buffalo Valley, Ltd., a Limited Partnership, for a sale/purchase price of \$900,000.00, to be paid as provided for in the Agreement attached.

25. To assure that the highest and best price is obtained, the sale will be subject to higher and better offers being made at the time of sale.

26. The sale of the interests being sold at the sale shall be a sale free and clear of all liens, claims, charges and interests of third parties, specifically including the interests of Respondents above named, which shall be divested from the assets being sold and attach to the proceeds of sale, excepting only the obligations to pay the owner of certain surface rights, to wit, the Cambria County Recreation & Conservation Authority the fifteen (15%) percent royalty interest as set forth in the deed from K&J to the Authority and under and subject to all presently existing and valid production agreements, contracts, operating agreements which relate to said interests, all of which shall be assumed and fulfilled by the successful bidder.

27. K&J believes and therefore avers that with the exception of the royalty interests due the said Authority, that none of the named Respondents has any liens or encumbrances against said property interests.

28. Section 327(a) of the Bankruptcy Code provides that "[t]he trustee, with the Court's approval, may employ one or more attorneys, accountants, appraisers, auctioneers, or other professional persons, that do not hold or represent an interest adverse to the estate, and that are disinterested persons, to represent or assist the trustee in carrying out the trustee's duties under this title."

29. The Court previously authorized and approved the retention of Shale Consultant, LLC, and under this Motion, the compensation to be paid to Shale Consultant, LLC is being reduced by 4%.

30. The Reorganized Debtor believes and therefore avers that the aforesaid method of sale is fair and reasonable, and in the best interest of the Reorganized Debtor, the estate and its creditors, and will assure that the highest and best prices for the property interests is obtained.

31. The proceeds of Sale shall be applied as follows:

- a. First, 6% of the gross sales proceeds on the highest and best offer brought to the Reorganized Debtor at least one hour prior to the sale shall be paid to the Broker as its commission for services rendered to the Seller at Closing.
- b. Next, the remaining proceeds shall be applied to the costs and expenses of sale, which include but are not limited to advertising, printing, mailing and notice fees incurred by the Reorganized and counsel to the Reorganized Debtor, the Reorganized Debtor's attorneys' fees for services rendered in connection with the proposed Auction and closing thereon, including the preparation of the necessary pleadings, bills of sale, reports of sale, and the like;¹
- c. Next, to lien holders, if any, in the order of the priority of their liens, with undisputed amounts due upon undisputed liens to be paid at closing and the amounts due upon disputed liens or upon disputed amounts to be retained in an estate account pending a determination of the parties' rights with respect thereto; and

¹ Such amounts shall be retained in an estate account but not paid out until such fees are approved by the Court for payment after Motion duly filed, notice and a hearing.

- d. Any remaining proceeds will be retained in an estate account and distributed in accord with the approved Plan of Confirmation.

32. The Reorganized Debtor believes that all of the parties participating in the auction will be good faith buyers, entitled to all of the protections and benefits accorded such buyers pursuant to 11 U.S.C. Section 363(m). In re Abbotts Dairies of Pennsylvania, Inc., 788 F.2d 143 (3d. Cir. 1986).

33. The Reorganized Debtor believes and therefore avers that the best interests of this estate and its creditors will be served by this Court, pursuant to 11 U.S.C. §363(b), authorizing the sale of the property interests described in Par. 14 and Ex. “A”, free and clear of all third party interests, liens, claims, charges and/or encumbrances against the same, specifically including but not limited to those of all parties named as Respondent(s) hereto as set forth above, except as noted supra.

WHEREFORE, the Reorganized respectfully requests that the Court to enter the Order attached granting the relief requested, and further, it authorizes its counsel to file the within Application/Motion on its behalf.

Dated: June 24, 2017

Respectfully Submitted,

Spence, Custer, Saylor, Wolfe & Rose, LLC
By: /s/ James R. Walsh,
James R. Walsh, Esquire
PA ID # 27901
1067 Menoher Blvd.
Johnstown, PA 15905
Tel: 814.536.0735
Fax: 814.539.1423
Jwalsh@spencecuster.com
Counsel for Reorganized Debtor/Movant

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT ("*Agreement*") is made this _____ day of May, 2017 ("*Effective Date*"), by and between K & J COAL CO., INC., a Reorganized Chapter 11 Debtor, a/k/a K & J COAL COMPANY (hereinafter, "*Seller*" or "K&J"), having an address of PO BOX 506, Macungie, PA 18062 and Buffalo Valley, Ltd., a Limited Partnership ("*Buyer*") or assignee(s) of Buyer, having an address of P. O. Box 1022, 1 Glade Park East, Kittanning, PA 16201.

RECITALS

WHEREAS K&J filed a voluntary petition for relief pursuant to the provisions of Chapter 11 of Title 11 of the U.S. Code, 11 U.S.C. Section 101 et. seq., on July 19, 2002, in the United States Bankruptcy Court For The Western District Of Pennsylvania, said case being docketed to case 02- 26645 BM (now 02-26645 JAD); and

WHEREAS K&J was a Debtor-In-Possession, with all of the power and authority accorded such status pursuant to 11 U.S.C. Section 1107; and

WHEREAS K&J thereafter filed a Plan of Reorganization dated as of August 31, 2003, and the same was scheduled for a confirmation hearing on February 9, 2004; and

WHEREAS after due and proper notice as required by law, the Court approved and confirmed the Debtor-In-Possession's Plan Of Reorganization Dated August 31, 2003, As Amended December 8, 2003, As Amended By The Order Of Confirmation Dated February 9, 2004 via its Order of February 9, 2004 (the "*Plan*"); and

WHEREAS said Plan provided, inter alia, for the Debtor, K&J Coal Company, to expose to sale its remaining real estate holdings, and for the Court to retain jurisdiction to authorize, approve and confirm said sales; and

WHEREAS K&J thereafter filed a Motion To Sell Real Estate Free And Clear Of Liens, Claims, Charges And/Or Encumbrances, Pursuant To 11 U.S.C. Section 363 (b), to wit, K&J's coal, support, surface entry, oil, gas and mineral rights, which is the coal, support, surface entry, oil, gas, associated hydrocarbons and/or oil and gas producing minerals as appear in the chain of title in and under the premises more fully described in "Exhibit A" of this Purchase And Sale Agreement, together with such surface entry, drilling, and removal rights as appear in the chain of title for each parcel, specifically including, but not limited to the Minerals as herein defined, which were reserved in the Special Warranty Deed from K&J to the Cambria County Recreation and Conservation Authority (hereinafter "*Authority*"), the provisions of which are incorporated herein by reference (hereinafter "*Minerals*"); and

WHEREAS, K&J has marketed said Minerals and has agreed to the terms and conditions of sale of the Minerals to Buyer, subject to approval and confirmation of sale by the Bankruptcy Court as required by law; and

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WHEREAS, the Seller shall promptly, upon execution of this Purchase and Sale Agreement, file a Motion to Sell Real Estate Free and Clear of Liens, Claims, Charges and/or Encumbrances, pursuant to 11 U.S.C. Section 363(b), to wit, the Minerals as defined herein; and

WHEREAS a hearing has been scheduled on the Motion To Approve And Authorize Sale Of Said Interests for June 30, 2017, to approve said sale free and clear of liens, claims, charges and encumbrances, excepting only the obligations to pay to the owner of the surface rights, currently the Authority, a fifteen percent (15%) royalty income on the property included in the Special Warranty Deed from K&J to the Authority, the provisions of which are incorporated herein; and

WHEREAS, the Bankruptcy Court must approve the final sale price agreed to between Buyer and Seller after a hearing before the Court, at which time higher and better offers will be considered, and the sale to the maker of the highest and best offer at the time of hearing will be accepted and approved; and

WHEREAS, K&J currently owns the Minerals as described above and as appear in the chain of title, in and under the premises more fully described in "Exhibit A", attached herein and incorporated into this Agreement, together with such surface entry, drilling and removal rights as appear in the chain of title for each parcel, specifically including but not limited to, the Minerals reserved in the Special Warranty Deed from K&J to the Authority, the provisions of which are incorporated herein by reference.

NOW THEREFORE, in consideration of the mutual covenants, conditions and considerations contained in this Agreement, and intending to be legally bound, the Buyer and Seller agree as follows:

TERMS

1. THE OFFER TO PURCHASE SET FORTH HEREIN IS ONLY VIABLE IF ACCEPTED AND EXECUTED IN WRITING BEFORE 5:00 P.M. (E.S.T.) ON MAY 23, 2017. AFTER THAT TIME, THE TERMS AND CONDITIONS OF THIS PURCHASE AND SALE AGREEMENT ARE WITHDRAWN AND THE OFFER TO PURCHASE IS NULL AND VOID.
2. INCORPORATION. The above-stated Recitals are hereby incorporated into, and made a part of, the terms of this Agreement as covenants as fully and completely as if restated as such at length herein.
3. CONVEYANCE. Seller shall convey to Buyer the following:
 - a. All the Seller's undivided rights, title and interests (whether legal or equitable and whether vested or contingent) in and to the Minerals together with such surface entry and drilling and removal rights as appear in the chain of title for each parcel, including, but not limited to: the Minerals, overriding royalty interests, production payments, fee royalty interests, and fee mineral interests, as well as surface access pipeline right of ways, rights of way and drilling and

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removal rights in and under the property described in Exhibit A and the Authority property referenced herein;

- b. All rights, title and interests of Seller in all presently existing and valid oil, gas and/or mineral unitization/pooling agreements, declarations and/or orders relating to the Minerals.
- c. All rights, title and interests of Seller in all presently existing and valid production sales (including sales related) contracts, operating agreements, royalty agreements, and other agreements and contracts which relate to the Minerals, or which relate to the exploration, development, operation, treatment, storage, transportation, marketing and production of the Minerals.

All of the above to which Buyer shall take title under and subject to the same, and shall assume said transfers, however, subject to the royalty interests and rights of the Authority as granted in the deed from Seller to Authority, aforementioned.

In consideration of the above, Buyer shall pay to Seller/K&J at closing, in immediately available United States Dollar funds as required hereunder, the sum of Nine Hundred Thousand and 00/100 (\$900,000.00) dollars, as the purchase price, less only Buyer's "Deposit" (as hereinafter defined), if any, as provided herein, as made, and less any credits due Buyer pursuant to any reductions in the number of acres being purchased under the terms of this Agreement.

- 4.1 DUE DILIGENCE PERIOD. The period beginning upon the final unappealable Bankruptcy Court Approval of Sale (Approval Date) and ending at 5:00 p.m. (Eastern Standard Time) on the one hundred fiftieth (150th) day after the Approval Date is hereinafter referred to as the "Due Diligence Period". An additional 30 day extension shall be granted upon request made by Buyer if, in its sole discretion, Buyer deems it necessary for the completion of due diligence. During the Due Diligence Period, Buyer may investigate the Minerals and title to the Minerals to determine, in Buyer's sole discretion, whether the Minerals are suitable for acquisition. If Buyer determines during the Due Diligence Period that certain of the Mineral rights are not suitable for acquisition, Buyer shall provide written notice to the Seller prior to the expiration of the Due Diligence Period of its intention to exclude those rights from Buyer's purchase obligations ("Purchaser Exclusion Notice"). Seller shall obtain for Buyer the rights reasonably and customarily necessary for Buyer to perform all of its due diligence activities with respect to the Minerals as described in this Agreement, and in the event Seller fails to obtain such rights, Buyer may, following five (5) business days prior written notice, (i) terminate this Agreement with no further obligations of either Party or (ii) elect to move forward with the Closing subject to the proportionate reduction as defined in section eight (8) below. Should the Buyer elect to terminate this Agreement, Seller shall then refund to the Buyer within five (5) business days of such termination: the (i) Deposit (as hereinafter defined) and (ii) all moneys deposited by the Buyer to the Closing Agent pursuant to this Agreement.

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- 4.2 **RIGHT OF TERMINATION.** Notwithstanding any other provision of this Agreement, Seller agrees that in the event Buyer, in its sole discretion, determines that the Minerals are not suitable for acquisition, Buyer shall have the unilateral right to terminate this Agreement by giving written notice thereof to Seller prior to the expiration of the Due Diligence Period. If Buyer gives such notice of termination within the Due Diligence Period, this Agreement shall terminate and (i) Deposits (as hereinafter defined) and (ii) all moneys shall be refunded to Buyer by the Closing Agent within five (5) days of the written notice and Buyer and Seller shall be relieved of all obligations under this Agreement, except as otherwise expressly set forth herein.
- 4.3 **RECORDS.** K&J shall, to the extent that it has records, original or otherwise, regarding its title to said Minerals and related interests, cooperate and accord Buyer access thereto within 7 days of the Approval Date at reasonable times and for reasonable periods, and in addition, after closing, Buyer shall have the right to take possession of all such original records in Seller's possession by removing the same from Seller's facility and/or storage facility.
- In the event that K&J shall thereafter reasonably require access to said records for litigation or any other reasonable reason, Buyer (or its Assignee(s)) shall reasonably cooperate and accord K&J access to those records within seven (7) days of K&J's written request therefore at reasonable times and for reasonable periods, and shall allow K&J, at K&J's sole cost and expense, to make copies of those records.
5. **NOTICE OF CLOSING.** Following Buyer's completion of its due diligence, unless it is determined by agreement of the parties or by a Court of competent jurisdiction that K&J does not have good title to the Minerals or Buyer has previously terminated the Agreement in its sole discretion pursuant to Paragraph 4.1 or 4.2 or otherwise, Buyer shall deliver to Seller a written notice ("**Notice**") confirming Buyer's intent to purchase the Minerals and schedule a closing for the purchase and sale of the Minerals at a time and place mutually convenient to both Buyer and Seller ("**Closing**") within the time frame(s) set forth herein, to wit, within a maximum of 210 days of the Approval Date, including 150 days of due diligence with the right to one 30 day extension if needed to complete title due diligence and subject to an additional 30 day curative period as set forth in Paragraph 6 herein. In no event shall the Closing occur later than thirty (30) days after the date of the Notice.
6. **TITLE CURATIVE.** Should a title defect exist, Buyer shall have the option to: a) terminate this contract pursuant to Paragraph 4.1 or 4.2 by providing notice to Seller, whereby all Deposit(s) (as hereinafter defined) shall be returned to Buyer, b) if only a "partial" defect exists, rendering a portion of the Minerals with marketable title and a portion with unmarketable title, Buyer may close only on the portion of the Minerals that has marketable title and may proportionately reduce the Purchase Price, or c) in the event of a title defect, delay Closing for a period of up to thirty (30) days ("**Cure Period**"), so that either Buyer or Seller may attempt to cure such defects to Buyer's sole satisfaction. Buyer or Seller must initiate any curative actions within thirty (30) days of notice of defects to either party, and failure to timely commence curative actions will result in

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forfeiture of the Cure Period. During the Cure Period, Buyer and Seller shall execute any documentation necessary to assist with the curative efforts. Failure to cure to Buyer's satisfaction will result in either the termination of the Agreement and return of all Deposits monies to the Buyer; or the exclusion of those properties from the sale; or the negotiation of a separate purchase price for any Minerals with defective title or other impairment. The aforesaid choices being at the discretion of the Buyer. Lease representations by Seller are stated herein on "Exhibit A".

7. **DEPOSIT, PURCHASE PRICE AND CLOSING.** Within 10 business days of the Approval Date, Buyer shall pay to Seller's credit the amount of **ten percent (10%)** of the Purchase Price as a Deposit ("**Deposit**") towards the purchase price of the Minerals. The Deposit and additional deposit sums paid prior to closing shall be credited towards the Purchase Price. The Deposit shall be held by K&J's counsel, and shall be deposited in the Seller's Counsel's IOLTA Account pending closing. This Deposit shall be refundable to Buyer in the event of the exercise of Buyer's rights to terminate under Paragraphs 4.1 and 4.2 or defect of title or other due diligence failure as stated herein. At Closing, Buyer shall pay to Seller by way of cash, or immediately available funds, the balance of the "Purchase Price" as fixed and determined herein; and Seller shall deliver to Buyer a Reorganized Debtor's Special Warranty Deed ("**Deed**") granting to Buyer all of K&J's rights, title and interest in and to the Minerals, under and subject to the above referenced rights and obligations. Should the Buyer fail to provide the Notice confirming Buyer's intent to purchase the Minerals, the Buyer shall be deemed to have elected not to proceed with the closing and the Deposit shall be refunded from Seller to Buyer and this Agreement shall be considered void and of no further effect.
8. **PROPORTIONATE REDUCTION.** Buyer and Seller agree that, in the event that Seller is unable to successfully convey the aggregate total of net Minerals in and under the property listed on Exhibit A and the Authority Deed by the time agreed upon under this Agreement, then, if Buyer so elects in its sole discretion, and does not otherwise terminate this Agreement, the Purchase Price shall be reduced pro rata by an amount equal to the consideration attributable to the undeliverable net Minerals. This Agreement shall otherwise remain in full force and effect as to the remaining amount of deliverable net Minerals.
9. **MUTUAL INDEMNITY.** Seller shall indemnify and hold Buyer, its directors, officers, employees and agents harmless from and against any and all liability, liens, demands, judgments, suits and claims of any kind or character arising out of, in connection with, or resulting from Seller's ownership of the Minerals, for all periods prior to and including the Closing. Buyer shall indemnify and hold Seller, its directors, officers, employees and agents harmless from and against any and all liability, liens, demands, judgments, suits and claims of any kind or character arising out of, in connection with, or resulting from Buyer's ownership of the Minerals, for all periods after the Closing. Buyer and Seller shall have the right to participate in the defense of any suit in which one of them may be a party without relieving the other party of the obligation to defend the suit.
10. **SELLER REPRESENTATIONS.** Seller represents to Buyer as follows:

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- a. **AUTHORITY:** Seller has full authority to enter into this Agreement, and to perform its obligations under this Agreement, and the conveyance of the Minerals under this Agreement has been, and the performance of this Agreement and the transactions contemplated herein shall be, performed at the time required, and duly and validly authorized by all requisite corporate action, if applicable, on the part of Seller at time of Closing, as well as by the United States Bankruptcy Court For The Western District Of Pennsylvania as evidenced by its Order attached as Ex. "B", under and subject to the rights and privileges set forth supra, which Buyer agrees it shall take title subject to the same and shall assume and be deemed to have assumed the same.
- b. **INTENT:** It is the Seller's intent to convey to Buyer all of Seller's current and/or future interests, (whether they be legal, beneficial or equitable) to the Minerals in and under the property as described in "Exhibit A" and the Authority deed. Seller agrees to execute, re-execute (if necessary) and deliver to Buyer all instruments, conveyances, and other documents and to do such other acts not inconsistent with this Agreement as may be reasonably requested by Buyer to carry out Seller's intent.
- c. **PENDING LEGAL PROCEEDINGS:** The conveyance of the Minerals under this Agreement is not in violation of any provision of, or does not require any consent, authorization, or approval under any judgment, court decree, judicial or administrative order, award, writ, injunction, statute, rule or regulation, and Seller has no knowledge of any claim, demand, filing, cause of action, administrative proceeding, lawsuit, or other litigation threatened or pending against the Seller, Minerals, or the property that could adversely affect the ownership, extraction or development of the Minerals as described in Exhibit "A" and the Authority deed, other than any proceedings relating to the oil and gas industry generally and to which Seller is not a named party. Furthermore, Seller is not in receipt of any notice, written or oral, from any governmental agency or other person that: i) claims any violation or repudiation of all or any part of the Minerals or any violation of any law or any environmental, conservation or other ordinance, code, rule or regulation; or ii) requires or calls attention to the need for any work, repairs, construction, alterations, or installations on or in connection with the Minerals with which Seller has not complied, other than the authorization and approval of the United States Bankruptcy Court For The Western District Of Pennsylvania, which K&J shall seek to obtain promptly after execution of this Agreement by all parties by filing the required Motion to Authorize and Approve Sale Free and Clear of Liens, Claims and Encumbrances other than the interests and rights of the Authority as aforesated.
- d. **REPRESENTATIONS:** No representation by Seller in this Agreement, or any agreement between Seller and Buyer pursuant to this Agreement, contains an intentionally untrue statement of a material fact or intentionally omits to state a material fact necessary to make the statements contained in any representation, in light of the circumstances under which it was made, misleading. Seller further represents that, to the best of Seller's knowledge, no undisclosed fact known to Seller that materially or adversely affects, or may materially and adversely affect, the operation, prospects or condition of any portion of the Minerals.

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- e. **WARRANTIES:** With the exceptions of the aforementioned representations, Seller is selling these Minerals "as is" without certification of title, however Seller agrees to warrant up to the purchase price by Reorganized Debtor's Special Warranty Deed, meaning that Seller warrants that the Minerals title is good to the best of its knowledge during Seller's period of ownership, and that Seller has not otherwise sold the Minerals excepting only the royalty interests due the Authority as aforesated. Seller will provide Buyer with a Reorganized Debtor's Special Warranty Deed at Closing. All other due diligence and title certification will be at the discretion of Buyer at Buyer's cost.
- f. **PAYMENT OF LIENS AT CLOSING:** Seller agrees that at Closing, should Buyer be unable to secure necessary releases or subordinations from lien holders, Buyer may make direct payment on Seller's behalf from Seller's funds to any lien holders with liens that may encumber the Minerals and that must be satisfied in order for Buyer to take marketable title to the Minerals. Seller authorizes Buyer and/or the Closing Agent contracted by Buyer to contact any lien holders directly on Seller's behalf in order to obtain payoff figures and to coordinate payment of liens at Closing. Seller's funds may be held in escrow at Closing and until such time as liens have been paid and releases filed at the appropriate public office.

The aforesaid notwithstanding, Buyer does acknowledge and agree that the Order of the Bankruptcy Court authorizing and approving the within subject sale of K&J's interest in the subject Minerals shall be a sale of Sellers interest in the subject Minerals free and clear of any and all liens, claims, charges, and/or encumbrances, excepting only those matters that Buyer has agreed are permitted encumbrances and third party interests, and to which it has agreed to take title under and subject to the same, and to assume, and that all divested interests have been divested from the realty interests of Sellers being transferred pursuant hereto, and have and shall attach to the proceeds of sale, and as such, that no liens, claims, charges and/or non-permitted encumbrances not assumed by Buyer encumber the interests being conveyed hereby, and as such, that Buyer cannot and shall not exercise the rights provided for in paragraph 1 of this subparagraph (f).

- g. **REMEDIES:** In the event of material breach of contract and failure/refusal to close by Seller, Seller agrees and acknowledges that Buyer may terminate the Agreement and be entitled to the return of all Deposit monies paid on account of the purchase price, including, but not limited to fees incurred in the conduct of due diligence including, but not limited to, the cost of title search; or, request specific performance.
11. **BUYER REPRESENTATIONS.** Buyer represents to Seller:
- a. **QUALIFICATION:** Buyer is a Limited Partnership, validly existing, and in good standing under the laws of the Commonwealth of Pennsylvania. Buyer is qualified to do business in and is in good standing under the laws of the said Commonwealth of Pennsylvania. Buyer, pursuant to its bylaws and certificate of organization, has the

Initials: ms

Purchase and Sale Agreement

Page 8 of 11

power and authority to acquire, own, and hold the Minerals and to perform the obligations required by this Agreement.

- b. CLOSING COSTS: Buyer shall be responsible for recording the Reorganized Debtor's Special Warranty Deed or Deeds to be tendered by Seller at Closing and shall be responsible for payment of any and all filing fees, due diligence costs, title search and/or certification costs, desired title insurance costs, and one half of the state or local Realty Transfer taxes imposed as a result of this transaction, except to the extent that the sale is exempt from real estate transfer taxes under and pursuant to a Plan of Reorganization approved and confirmed by the United States Bankruptcy Court For The Western District Of Pa. Dated August 31, 2003, As Amended December 8, 2003, As Further Amended By The Order Of Confirmation (the "Plan") and the applicable provisions of 11 U.S.C. Section 1146(c), and *IN RE HECHINGER INV. VO. OF DELAWARE, INC.*, 335 F.3D 243 (3RD Circ., 2003).
12. CLOSING. The consummation of the sale and purchase of the Minerals contemplated by this Agreement shall be subject to the following conditions: a.) Seller must execute a Reorganized Debtor's Special Warranty Deed or Deeds, to be recorded in the Cambria & Clearfield County Recorder of Deeds, which vests in Buyer ownership of the Minerals; b.) There shall be no material adverse change in the condition of the Minerals that materially and adversely impacts the feasibility of extracting the Minerals from the property; and c.) Buyer timely delivers the Notice to Seller as mandated by the above terms and presents, at closing, the balance of the purchase price funds due Seller in immediately available funds.
13. BROKERS: Buyer has not been represented by a broker in connection with this transaction and shall not be responsible for broker commissions or fees, if any. Seller shall, to the extent authorized and approved by the Bankruptcy Court, be solely responsible for broker commissions, if any, in connection with this transaction. Seller agrees to hold harmless and indemnify the Buyer from and against any claims of or liabilities to any broker based on dealings or alleged dealings relating to this transaction.
14. NOTICES: All notices and communications required or permitted under this Agreement shall be in writing, delivered to or sent by U.S. Mail, postage prepaid, or facsimile addressed as follows:

If to Buyer:
Buffalo Valley, Ltd.
Attn: Mark Snyder
1 Glade Park East
Kittanning, PA 16201

If to Seller:
K & J Coal Co. Inc.
Attn: Dale Augenstein, President
PO BOX 506
Macungie, PA 18062,

With a copy to:
Ray F. Middleman, Esquire
Malone Middleman, P.C.
Wexford Professional Building, III
11676 Perry Highway, Suite 3100

James R. Walsh, Esquire
Spence, Custer, Saylor, Wolfe & Rose, LLC
P.O. Box 280
Johnstown, PA 15907

Initials: ms

Wexford, PA 15090

15. **BINDING AND COMPLETE CONTRACT:** This Agreement shall inure to the benefit of and be binding upon Buyer and Seller and their respective successors and assigns. This Agreement is fully assignable. However, no assignment by a party shall relieve that party of any duties or obligations hereunder, and no assignment by Buyer or its assignee(s) shall be valid or enforceable as to Seller unless and until Seller has been provided with written notice of such assignment and is provided with a copy of the assignment duly executed by both Assignor and Assignee. This Agreement constitutes the complete agreement between the Buyer and Seller.
16. **AMENDMENTS:** This Agreement shall only be modified or amended by a writing signed by both Buyer and Seller. In no event shall the Buyer and Seller orally agree to modify any term or provision contained herein, and any such modification that is not in accord with the terms of sale authorized and approved by the United States Bankruptcy Court For The Western District of Pa. shall only become effective and binding if and when the said Court approves the same after Motion duly filed, Notice and the entry of a Final Order approving the same..
17. **LAW AND VENUE:** This Agreement shall be governed by, and construed and interpreted according to the laws of the Commonwealth of Pennsylvania, except to the extent that the matter is governed by the provisions of Title 11 of the U.S. Code, 11 U.S.C. Section 101, et seq, and the United States Bankruptcy Court For The Western District Of Pennsylvania shall have sole jurisdiction regarding any dispute between Buyer and Seller arising under this Agreement.
18. **COUNTERPARTS:** This Agreement may be executed in as many counterparts as deemed necessary or convenient, each of which, when so executed, shall be deemed an original, but all such counterparts shall constitute but one and the same instrument.
19. **ENFORCEABILITY:** If any term or provision of this Agreement is held to be void or unenforceable, that term or provision will be severed from this Agreement, the balance of the Agreement will survive, and the balance of this Agreement will be reasonably construed to carry out the intent of the parties as evidenced by the terms of this Agreement.
20. **TOTAL AGREEMENT:** This Agreement contains the entire Agreement between the parties as to the matters provided for herein, and each agrees that the terms of this Agreement shall supersede any and all prior Agreements between the parties as to such matters, whether oral or written.

Initials: MA

Purchase and Sale Agreement

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SIGNATURE PAGE

IN WITNESS WHEREOF the parties have, via their authorized agents, executed this Agreement the date and year set forth above, INTENDING TO HAVE THEIR PRINCIPALS BE LEGALLY BOUND HEREBY.

SELLER:

K & J Coal Co., Inc., d/b/a K & J Coal
Company, a Reorganized Debtor in a
Chapter 11 Bankruptcy Case Filed
In The United States Bankruptcy Court For
The Western District Of Pennsylvania at
Case # 02- 26645 JAD

Initials: *ma*

Purchase and Sale Agreement

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Witness

Date

By: _____

DALE AUGENSTEIN, President

Date: _____

BUYER:

Buffalo Valley, Ltd., a Limited Partnership
by its General Partner Buffalo Valley Real
Estate, LLC

By: _____

MARK A. SNYDER, President

Date: 5/23/17

Witness

Date

Schedule of Exhibits:

Exhibit A – List of Property and Confidential Terms, Lease and Production Representations

Exhibit B- Order Of Bankruptcy Court Authorizing And Approving Sale.

EXHIBIT "A"

EXHIBIT "B"

Initials: MS

Purchase and Sale Agreement

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Witness Date

By: *Dale Augenstein*
DALE AUGENSTEIN, President
Date: *5/29/17*

BUYER:
Buffalo Valley, Ltd., a Limited Partnership
by its General Partner Buffalo Valley Real
Estate, LLC

Witness Date

By: *Mark A. Snyder*
MARK A. SNYDER, President
Date: *5/23/17*

Schedule of Exhibits:

Exhibit A – List of Property and Confidential Terms, Lease and Production Representations

~~Exhibit B – Order Of Bankruptcy Court Authorizing And Approving Sale.~~

EXHIBIT "A"

~~EXHIBIT "B"~~

Initials: *MS*
DA

EXHIBIT A TO PURCHASE AND SALE AGREEMENT

Parcel Identifier (Number and Map)		Mined Parcel Number	Surface Parcel Number	Deed Reference	Gross Acres	Net Acres	Pinel Township	Pinel County	Pinel State	Recording (Vol / Pg)	Well Name	Well Issues	Regulatory ID	Regulatory %	Name of Estate	Lease/Ownership Date/Type	Tract Name	County Number	Annual Taxes 2015	Notes	Selling to Cambria	Transfer from U.S. Bureau Gas Apportion
8.7	02-012, -023 000-M	109-E-173 12-13-102	Cambria BC 1979 PG 554 - 568 Charitable Instrument 2004693	450.0000	450.0000		Cambria	PA	Yes	021-20287 021-20294	Charfield Runabout Coal Camp 2 Lease Unit 2		1610010 06100410 2004210	C.B.C. 15.60% Gas Other 12.5%	Dennis LLC 03 1564 PG 885-894	Open	James Hunter	012-047166	\$14.07	Also includes 15 Acres in Charfield County map No 17-000-00013 Center Number: 100500571	Yes	No
8.4	02-012, -023 000-M	109-E-172 12-13-103	Cambria BC 1979 PG 554 - 568 Charitable Instrument 2004693	479.0000	479.0000		Cambria	PA	Yes	021-20293	K&L Run 1		Check Unknown	11.5%	Dennis LLC 03 1564 PG 885-894	Partial 100%/Open See Lease and Map	Robert Egan	012-047177	\$218.44	Also includes a portion of 59 acres of the 473 acres in Charfield County map 17-000-00013 but we do not receive a tax return from Charfield County on this 59 acres.	Yes	No
8.10	02-012, -023 000-M	12-14-100	Cambria BC 1979 PG 554 - 568 Charitable Instrument 2004693	443.8230	443.5630		Cambria	PA	Yes	021-21008 021-20292 021-21052 021-20293	Page 2 Charfield Runabout Coal Camp 2 Lease Unit 2 K&L Run 1 K&L Run 2 K&L Run 3 K&L Run 4 K&L Run 5 K&L Run 6 K&L Run 7 K&L Run 8 K&L Run 9 K&L Run 10 K&L Run 11 K&L Run 12 K&L Run 13 K&L Run 14 K&L Run 15 K&L Run 16 K&L Run 17 K&L Run 18 K&L Run 19 K&L Run 20 K&L Run 21 K&L Run 22 K&L Run 23 K&L Run 24 K&L Run 25 K&L Run 26 K&L Run 27 K&L Run 28 K&L Run 29 K&L Run 30 K&L Run 31 K&L Run 32 K&L Run 33 K&L Run 34 K&L Run 35 K&L Run 36 K&L Run 37 K&L Run 38 K&L Run 39 K&L Run 40 K&L Run 41 K&L Run 42 K&L Run 43 K&L Run 44 K&L Run 45 K&L Run 46 K&L Run 47 K&L Run 48 K&L Run 49 K&L Run 50 K&L Run 51 K&L Run 52 K&L Run 53 K&L Run 54 K&L Run 55 K&L Run 56 K&L Run 57 K&L Run 58 K&L Run 59 K&L Run 60 K&L Run 61 K&L Run 62 K&L Run 63 K&L Run 64 K&L Run 65 K&L Run 66 K&L Run 67 K&L Run 68 K&L Run 69 K&L Run 70 K&L Run 71 K&L Run 72 K&L Run 73 K&L Run 74 K&L Run 75 K&L Run 76 K&L Run 77 K&L Run 78 K&L Run 79 K&L Run 80 K&L Run 81 K&L Run 82 K&L Run 83 K&L Run 84 K&L Run 85 K&L Run 86 K&L Run 87 K&L Run 88 K&L Run 89 K&L Run 90 K&L Run 91 K&L Run 92 K&L Run 93 K&L Run 94 K&L Run 95 K&L Run 96 K&L Run 97 K&L Run 98 K&L Run 99 K&L Run 100	7095.110 WEP 15687 1610010 06100410 2004210 20050510 20050510	C.B.C. 15.60% Gas Other 12.5%	Dennis LLC 03 1564 PG 885-894	Partial 100%/Open See Lease and Map	John Pope	012-047164	\$205.76		Yes	No	
8.6	02-012, -018 000-M	12-14-103 109-E-171	Cambria BC 1979 PG 554 - 568 Charitable Instrument 2004693	401.0000	401.0000		Cambria	PA	No					12.5%	Dennis LLC 03 1564 PG 885-894	Open	George Bobbin	012-047163	\$49.11	George Bobbin Vowing this 388.0623 acres to be sold to Cambria County map No 17-000-00001	Yes	No
8.13	02-012, -016 000-M	12-15-100	Cambria BC 1979 PG 554 - 568 Charitable Instrument 2004693	387.0630	387.0630		Cambria	PA	No					12.5%	Dennis LLC 03 1564 PG 885-894	Open	Charles Pope	012-047163	\$310.35	12.5% of 388.0623 acres, Charfield County map No 17-000-00001 3.4 "add trap" was sold to Brother in 1977	Yes	No
8.3	02-012, -023 000-M	109-E-18-1 12-13-100	Cambria BC 1979 PG 554 - 568 Charitable Instrument 2004693	266.1870	266.1870		Cambria	PA	Yes	021-20292 021-20293 021-20294 021-20295 021-20296 021-20297 021-20298 021-20299 021-20300 021-20301 021-20302 021-20303 021-20304 021-20305 021-20306 021-20307 021-20308 021-20309 021-20310 021-20311 021-20312 021-20313 021-20314 021-20315 021-20316 021-20317 021-20318 021-20319 021-20320 021-20321 021-20322 021-20323 021-20324 021-20325 021-20326 021-20327 021-20328 021-20329 021-20330 021-20331 021-20332 021-20333 021-20334 021-20335 021-20336 021-20337 021-20338 021-20339 021-20340 021-20341 021-20342 021-20343 021-20344 021-20345 021-20346 021-20347 021-20348 021-20349 021-20350 021-20351 021-20352 021-20353 021-20354 021-20355 021-20356 021-20357 021-20358 021-20359 021-20360 021-20361 021-20362 021-20363 021-20364 021-20365 021-20366 021-20367 021-20368 021-20369 021-20370 021-20371 021-20372 021-20373 021-20374 021-20375 021-20376 021-20377 021-20378 021-20379 021-20380 021-20381 021-20382 021-20383 021-20384 021-20385 021-20386 021-20387 021-20388 021-20389 021-20390 021-20391 021-20392 021-20393 021-20394 021-20395 021-20396 021-20397 021-20398 021-20399 021-20400 021-20401 021-20402 021-20403 021-20404 021-20405 021-20406 021-20407 021-20408 021-20409 021-20410 021-20411 021-20412 021-20413 021-20414 021-20415 021-20416 021-20417 021-20418 021-20419 021-20420 021-20421 021-20422 021-20423 021-20424 021-20425 021-20426 021-20427 021-20428 021-20429 021-20430 021-20431 021-20432 021-20433 021-20434 021-20435 021-20436 021-20437 021-20438 021-20439 021-20440 021-20441 021-20442 021-20443 021-20444 021-20445 021-20446 021-20447 021-20448 021-20449 021-20450 021-20451 021-20452 021-20453 021-20454 021-20455 021-20456 021-20457 021-20458 021-20459 021-20460 021-20461 021-20462 021-20463 021-20464 021-20465 021-20466 021-20467 021-20468 021-20469 021-20470 021-20471 021-20472 021-20473 021-20474 021-20475 021-20476 021-20477 021-20478 021-20479 021-20480 021-20481 021-20482 021-20483 021-20484 021-20485 021-20486 021-20487 021-20488 021-20489 021-20490 021-20491 021-20492 021-20493 021-20494 021-20495 021-20496 021-20497 021-20498 021-20499 021-20500 021-20501 021-20502 021-20503 021-20504 021-20505 021-20506 021-20507 021-20508 021-20509 021-20510 021-20511 021-20512 021-20513 021-20514 021-20515 021-20516 021-20517 021-20518 021-20519 021-20520 021-20521 021-20522 021-20523 021-20524 021-20525 021-20526 021-20527 021-20528 021-20529 021-20530 021-20531 021-20532 021-20533 021-20534 021-20535 021-20536 021-20537 021-20538 021-20539 021-20540 021-20541 021-20542 021-20543 021-20544 021-20545 021-20546 021-20547 021-20548 021-20549 021-20550 021-20551 021-20552 021-20553 021-20554 021-20555 021-20556 021-20557 021-20558 021-20559 021-20560 021-20561 021-20562 021-20563 021-20564 021-20565 021-20566 021-20567 021-20568 021-20569 021-20570 021-20571 021-20572 021-20573 021-20574 021-20575 021-20576 021-20577 021-20578 021-20579 021-20580 021-20581 021-20582 021-20583 021-20584 021-20585 021-20586 021-20587 021-20588 021-20589 021-20590 021-20591 021-20592 021-20593 021-20594 021-20595 021-20596 021-20597 021-20598 021-20599 021-20600 021-20601 021-20602 021-20603 021-20604 021-20605 021-20606 021-20607 021-20608 021-20609 021-20610 021-20611 021-20612 021-20613 021-20614 021-20615 021-20616 021-20617 021-20618 021-20619 021-20620 021-20621 021-20622 021-20623 021-20624 021-20625 021-20626 021-20627 021-20628 021-20629 021-20630 021-20631 021-20632 021-20633 021-20634 021-20635 021-20636 021-20637 021-20638 021-20639 021-20640 021-20641 021-20642 021-20643 021-20644 021-20645 021-20646 021-20647 021-20648 021-20649 021-20650 021-20651 021-20652 021-20653 021-20654 021-20655 021-20656 021-20657 021-20658 021-20659 021-20660 021-20661 021-20662 021-20663 021-20664 021-20665 021-20666 021-20667 021-20668 021-20669 021-20670 021-20671 021-20672 021-20673 021-20674 021-20675 021-20676 021-20677 021-20678 021-20679 021-20680 021-20681 021-20682 021-20683 021-20684 021-20685 021-20686 021-20687 021-20688 021-20689 021-20690 021-20691 021-20692 021-20693 021-20694 021-20695 021-20696 021-20697 021-20698 021-20699 021-20700 021-20701 021-20702 021-20703 021-20704 021-20705 021-20706 021-20707 021-20708 021-20709 021-20710 021-20711 021-20712 021-20713 021-20714 021-20715 021-20716 021-20717 021-20718 021-20719 021-20720 021-20721 021-20722 021-20723 021-20724 021-20725 021-20726 021-20727 021-20728 021-20729 021-20730 021-20731 021-20732 021-20733 021-20734 021-20735 021-20736 021-20737 021-20738 021-20739 021-20740 021-20741 021-20742 021-20743 021-20744 021-20745 021-20746 021-20747 021-20748 021-20749 021-20750 021-20751 021-20752 021-20753 021-20754 021-20755 021-20756 021-20757 021-20758 021-20759 021-20760 021-20761 021-20762 021-20763 021-20764 021-20765 021-20766 021-20767 021-20768 021-20769 021-20770 021-20771 021-20772 021-20773 021-20774 021-20775 021-20776 021-20777 021-20778 021-20779 021-20780 021-20781 021-20782 021-20783 021-20784 021-20785 021-20786 021-20787 021-20788 021-20789 021-20790 021-20791 021-20792 021-20793 021-20794 021-20795 021-20796 021-20797 021-20798 021-20799 021-20800 021-20801 021-20802 021-20803 021-20804 021-20805 021-20806 021-20807 021-20808 021-20809 021-20810 021-20811 021-20812 021-20813 021-20814 021-20815 021-20816 021-20817 021-20818 021-20819 021-20820 021-20821 021-20822 021-20823 021-20824 021-20825 021-20826 021-20827 021-20828 021-20829 021-20830 021-20831 021-20832 021-20833 021-20834 021-20835 021-20836 021-20837 021-20838 021-20839 021-20840 021-20841 021-20842 021-20843 021-20844 021-20845 021-20846 021-20847 021-20848 021-20849 021-20850 021-20851 021-20852 021-20853 021-20854 021-20855 021-20856 021-20857 021-20858 021-20859 021-20860 021-20861 021-20862 021-20863 021-20864 021-20865 021-20866 021-20867 021-20868 021-20869 021-20870 021-20871 021-20872 021-20873 021-20874 021-20875 021-20876 021-20877 021-20878 021-20879 021-20880 021-20881 021-20882 021-20883 021-20884 021-20885 021-20886 021-20887 021-20888 021-20889 021-20890 021-20891 021-20892 021-20893 021-20894 021-20895 021-20896 021-20897 021-20898 021-20899 021-20900 021-20901 021-20902 021-20903 021-20904 021-20905 021-20906 021-20907 021-20908 021-20909 021-20910 021-20911 021-20912 021-20913 021-20914 021-20915 021-20916 021-20917 021-20918 021-20919 021-20920 021-20921 021-20922 021-20923 021-20924 021-20925 021-20926 021-20927 021-20928 021-20929 021-20930 021-20931 021-20932 021-20933 021-20934 021-20935 021-20936 021-20937 021-20938 021-20939 021-20940 021-20941 021-20942 021-20943 021-20944 021-20945 021-20946 021-20947 021-20948 021-20949 021-20950 021-20951 021-20952 021-20953 021-20954 021-20955 021-20956 021-20957 021-20958 021-20959 021-20960 021-20961 021-20962 021-20963 021-20964 021-20965 021-20966 021-20967 021-20968 021-20969 021-20970 021-20971 021-20972 021-20973 021-20974 021-20975 021-20976 021-20977 021-20978 021-20979 021-20980 021-20981 021-20982 021-20983 021-20984 021-20985 021-20986 021-20987 021-20988 021-20989 021-20990 021-20991 021-20992 021-20993 021-20994 021-20995 021-20996 021-20997 021-20998 021-20999 021-21000												

[illegible]

Date _____

Date 3/11/11

Date _____

Date 3/11/11

Page 3 of 3

- f. PAYMENT OF LIENS AT CLOSING: Seller agrees that at Closing, should Buyer be unable to secure necessary releases or subordinations from lien holders, Buyer may make direct payment on Seller's behalf from Seller's funds to any lien holders with liens that may encumber the Minerals and that must be satisfied in order for Buyer to take marketable title to the Minerals. Seller authorizes Buyer and/or the Closing Agent contracted by Buyer to contact any lien holders directly on Seller's behalf in order to obtain payoff figures and to coordinate payment of liens at Closing. Seller's funds may be held in escrow at Closing and until such time as liens have been paid and releases filed at the appropriate public office. *see 6/11*

The aforesaid notwithstanding, Buyer does acknowledge and agree that the Order of the Bankruptcy Court authorizing and approving the within subject sale, a copy of which is attached as Ex. "B", effects a sale of Sellers interest in the subject Minerals free and clear of any and all liens, claims, charges, and/or encumbrances, excepting only those matters that Buyer has agreed are permitted encumbrances and third party interests, and to which it has agreed to take title under and subject to the same, and to assume, and that all divested interests have been divested from the realty interests of Sellers being transferred pursuant hereto, and have and shall attach to the proceeds of sale, and as such, that no liens, claims, charges and/or non-permitted encumbrances not assumed by Buyer encumber the interests being conveyed hereby, and as such, that Buyer cannot and shall not exercise the rights provided for in paragraph 1 of this subparagraph (f).

- g. REMEDIES: In the event of material breach of contract and failure/refusal to close by Seller, Seller agrees and acknowledges that Buyer may terminate the Agreement and be entitled to the return of all Deposit monies paid on account of the purchase price, including, but not limited to fees incurred in the conduct of due diligence including, but not limited to, the cost of title search; or, request specific performance. *dh*

11. BUYER REPRESENTATIONS. Buyer represents to Seller:

- a. QUALIFICATION: Buyer is a(n) Limited Partnership, validly existing, and in good standing under the laws of the Commonwealth of Pennsylvania. Buyer is qualified to do business in and is in good standing under the laws of the said Commonwealth of Pennsylvania. Buyer, pursuant to its bylaws and certificate of organization, has the power and authority to acquire, own, and hold the Minerals and to perform the obligations required by this Agreement.
- b. CLOSING COSTS: Buyer shall be responsible for recording the Special Warranty Deed or Deeds to be tendered by Seller at Closing and shall be responsible for payment of any and all filing fees, due diligence costs, title search and/or certification costs, desired title insurance costs, and one half of the state or local Realty Transfer taxes imposed as a result of this transaction, except to the extent that the sale is exempt from real estate transfer taxes under and pursuant to a Plan of Reorganization approved and confirmed by the United States Bankruptcy Court For The Western District Of Pa. Dated August 31, 2003, As Amended December 8, 2003, As Further

Initials: _____



PURPOSE OF THIS CONTRACT – Owner is entering into this Agreement with Broker for the marketing of and the sale of the above listed property to oil and gas buyers, drillers and developers, with the purpose of acquiring a buyer at a price acceptable to Owner for Owner's oil & gas interest in tracts totaling 5,602.764 (+/-) net mineral acres, which sale shall be subject to authorization and approval of the Bankruptcy Court of the proposed sale, and also shall be subject to receipt of higher and better offers at the time of sale.

LIST PRICE SHALL BE: One Million Two Hundred Fifty Thousand (\$1,250,000) Seller may accept an offer less than the list price subject to final Court Approval.

EXCLUSIVE RIGHT TO SELL -In consideration of Broker's Agreement to market and to use Broker's effort to find a buyer for oil and gas and/or other mineral rights of the property described herein, the undersigned OWNER hereby gives Broker the **SOLE AND EXCLUSIVE RIGHT TO SELL** for the above described property at the approval of the Bankruptcy Court. Owner agrees not to obligate or commit to any other oil and gas buyer, lessee or broker while under contract with Broker. Owner allows Broker to use print and/or electronic advertising. Broker is acting as Owner's Agent.

TERM OF THIS AGREEMENT – THE TIME PERIOD OF THIS AGREEMENT IS NINETY DAYS FROM EXECUTION DATE BY OWNER.

IN THE EVENT OF A SALE BY OF THE OIL AND GAS OR OTHER MINERAL RIGHTS SET FORTH HEREIN BY WHOSOEVER MADE OR EFFECTED, INCLUDING THE OWNER, THE OWNER ACKNOWLEDGES AND AGREES THAT BROKER SHALL BE PAID SIX (6) PERCENT OF THE HIGHEST PURCHASE PRICE AND BEST OFFER BROUGHT BY CX-ENERGY TO THE OWNER ONE HOUR BEFORE THE SCHEDULED SALE TIME AND DATE. IN THE EVENT OF A HIGHER OFFER, AS A RESULT THE COURT SALE, BROKER SHALL NOT BE PAID ON ANY SALES PRICE IN EXCESS OF THE HIGHEST OFFER BROKER BROUGHT BY BROKER.

Broker agrees that the Lessee/Transferee shall directly make payment to Owner's counsel, on Owner's behalf, and all such funds shall; be deposited into the Estate account pending closing or further Order of Bankruptcy Court. The undersigned represent that they are the sole OWNERS of the listed property and agree to convey the property and its possession to purchaser at closing by negotiated warranty deed, free of all liens and encumbrances, subject to regular and customary use, easements and restrictions of record.

DEPOSIT MONEY – Debtor's counsel will keep all deposit monies paid by or for the buyer in an estate account. Owner agrees that the person keeping the deposit monies may wait to deposit any uncashed check that is received as deposit money until Owner has accepted an offer.



NO OTHER CONTRACTS - Owner will not enter into another Agreement with another broker that begins before the Termination Date of this Agreement.

HEIRS AND ASSIGNS-This Agreement shall be binding upon the heirs, executors, administrators, successors and assigns of the parties hereto.

DISCLAIMER - The value of real estate and oil, gas & mineral rights and is speculative and has fluctuated very much in the last few years, and will most likely do so in the future based upon the price of oil and natural gas, technology and numerous other factors. We are making no predictions that lease bonus payments, royalty payments, and/or the value of real estate and oil, gas, & mineral interests in the future will be any greater or less, or the same than what they are now.

ACKNOWLEDGEMENT- Seller acknowledges receipt of one copy of this agreement.

GOVERNING LAW- This Agreement shall be governed by and be construed in accord with the laws of the Commonwealth of Pennsylvania, which shall at all times be controlling, except to the extent that the issue is governed by the provisions of Title 11 of the U.S. Code, in which case Title 11 shall be controlling.

VENUE- The exclusive forum for the resolution of any disputes that may arise under this Agreement shall be the United States Bankruptcy Court For The Western District of Pennsylvania.

AMENDMENT- This Agreement shall not be amended, in whole in in part, except via a writing executed by both parties hereto, and to the extent required, is approved by the United States Bankruptcy Court For The Western District of Pa.

TOTAL AGREEMENT- This Agreement contains the entire Agreement between the parties as to the matters provided for herein, and each agrees that the terms of this Agreement shall supersede any and all prior Agreements between the parties as to such matters, whether oral or written.

K & J Coal Co., Inc., d/b/a K & J Coal Company, a
Reorganized Debtor in a Chapter 11 Bankruptcy Case Filed
In The United States Bankruptcy Court For The Western
District Of Pennsylvania at Case # 02- 26645 JAD

Witness Date

By: Dale Augenstein 5/10/17
DALE AUGENSTEIN, President Date

Witness Date

[Signature] 5/12/17
Broker /Agent Date

VERIFICATION OF AUCTIONEER PURSUANT TO RULE 2014

I, William Smith, individually and on behalf of Shale Consultants, LLC, d/b/a CX-Energy declare and certify that the statements contained in the attached Application to Retain Auctioneer are true and correct to the best of my knowledge, information and belief.

I have no connection with the Reorganized Debtor or its principals, creditors, or any other party in interest, their respective attorneys and accountants, the United States Trustee, or any person employed in the Office of the United States Trustee.

Neither I nor anyone associated with Shale Consultants, LLC, d/b/a CX-Energy have an adverse interest to the interest of the Reorganized Debtor.

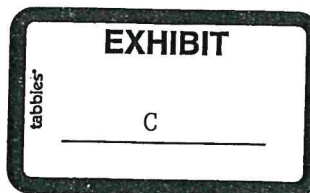
1) William Smith, is an auctioneer employed by Shale Consultants, LLC, d/b/a CX-Energy, 1371 Washington Pike, Suite 204, Bridgeville, Pa., 15017.

2) I am disinterested in the within matter.

I have reviewed the records of Shale Consultant, LLC, d/b/a CX-Energy, in which I am an agent, and, based on said review and the information garnered therefrom, have determined that the agency and all other members and associates of the same are disinterested, and have no connections with any party in interest other than as set forth above.

The agency and I will be compensated through a Buyer's Premium equal to 10% of the sale price, as set forth in the CX- Energy Oil And Gas Rights Listing Agreement.

In addition, the Agency will be compensated for its out of pocket advertising expenses, and will receive a \$1,500.00 deposit toward said expenses and costs upon approval of the Agencies retention by the Court.



In the event that further information regarding disinterestedness or the existence of a conflict of interest on behalf of myself, the agency or any member or associate of the same becomes known, I will make further disclosure of the same to the Court.

Dated:

A handwritten signature in black ink, appearing to read "William Smith, Jr.", written over a horizontal line.

WILLIAM SMITH, JR.
SHALE CONSULTANTS, LLC, d/b/a CX-
ENERGY